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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,834	(	02/25/2002	Timothy W. Exler	01-393	4641
30058	7590	11/04/2004		EXAM	INER
COHEN &		•	RAMIREZ,	RAMIREZ, RAMON O	
11 STANWIX STREET 15TH FLOOR				ART UNIT	PAPER NUMBER
PITTSBURGH, PA 15222				3632	

**DATE MAILED: 11/04/2004** 

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	
$\langle$	10/082,834	EXLER, TIMOTHY W.	
Office Action Summary	Examiner	Art Unit	
•	RAMON O RAMIREZ	3632	
The MAILING DATE of this communicat	tion appears on the cover sheet with		
Period for Reply  A SHORTENED STATUTORY PERIOD FOR THE MAILING DATE OF THIS COMMUNICA  - Extensions of time may be available under the provisions of 3' after SIX (6) MONTHS from the mailing date of this communic  - If the period for reply specified above is less than thirty (30) da  - If NO period for reply is specified above, the maximum statuto  - Failure to reply within the set or extended period for reply will, Any reply received by the Office later than three months after the earned patent term adjustment. See 37 CFR 1.704(b).	TION. 7 CFR 1.136(a). In no event, however, may a reply ation. ays, a reply within the statutory minimum of thirty (3 yoriod will apply and will expire SIX (6) MONTH! by statute, cause the application to become ABAN	y be timely filed 60) days will be considered timely. S from the mailing date of this communication. DONED (35 U.S.C. § 133).	
Status		·	
<ul> <li>1) Responsive to communication(s) filed of the communication (s).</li> <li>2a) This action is FINAL. 2b.</li> <li>3) Since this application is in condition for closed in accordance with the practice.</li> </ul>	☐ This action is non-final.  allowance except for formal matters		
Disposition of Claims			
4) ⊠ Claim(s) <u>1,4-11 and 14-18</u> is/are pendin 4a) Of the above claim(s) is/are v 5) □ Claim(s) is/are allowed. 6) ⊠ Claim(s) <u>1,4-9,11 and 15-17</u> is/are rejected to claim(s) <u>10,14 and 18</u> is/are objected to claim(s) are subject to restriction	withdrawn from consideration. cted. o.		
Application Papers			
9) The specification is objected to by the E 10) The drawing(s) filed on is/are: a) Applicant may not request that any objectio Replacement drawing sheet(s) including the 11) The oath or declaration is objected to by	Daccepted or b) objected to by n to the drawing(s) be held in abeyance correction is required if the drawing(s)	e. See 37 CFR 1.85(a). is objected to. See 37 CFR 1.121(d).	
Priority under 35 U.S.C. § 119			
	cuments have been received. cuments have been received in App the priority documents have been re I Bureau (PCT Rule 17.2(a)).	olication No eceived in this National Stage	
Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO 3) Information Disclosure Statement(s) (PTO-1449 or PTO-1449 or		nmary (PTO-413) Mail Date ormal Patent Application (PTO-152)	

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#### **Detailed Action**

This is the fourth Office Action corresponding to amendment filed Sep 28, 2004. The application contains 14 claims. Claims 2-3, 12 and 13 are cancelled. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### Claim Rejections - 35 USC § 112

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. No proper antecedent is found in the claim for "said first surface".

# Claim Rejections - 35 USC § 103

Claims 1, 4-9, 11, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama (Pat No 3,921,620).

The patent to Nakayama shows a band, having fastening means, magnet (6) secured to one side of the band in a crevice and being covered by cloth means (7).

The type of magnet used, dimension and used of indicia are all considered to be obvious matters of engineering choice with no patentable significance. The device shown by Nakayama is fully capable of holding a container by wrapping around the outer surfaces of the container.

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## Allowable Subject Matter

Claims 10, 14 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that Nakamara is not being used to hold a container. The examiner agrees but the container is not being claimed as a positive element of the combination; it is recited in functional language. As mentioned above, Nakamara is fully capable of holding a container. If the container were claimed as a positive element of the combination, said claim would be allowed. Applicant also argues that Nakamara does not teach a magnet having strength of about or greater than 30 kilogauss. The choice of a magnet is considered to be a matter of engineering choice accordingly to the specific magnetic force desired.

#### Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is (703) 308-0748. The examiner can normally be reached on MONDAY-FRIDAY, IST FRIDAY OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LESLIE BRAUN can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAMON O. RAMIREZ

Primary Examiner Art Unit 3632

**ROR** 

November 1, 2004